

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

TYSON FOODS, INC.,)

IBP REDEVELOPMENT CORP.,)

IBP FOOD CO.,)

FOODBRANDS SUPPLY CHAIN)

SERVICES, INC.,)

TYSON CHICKEN, INC.,)

TYSON DELI, INC.,)

TYSON FRESH MEATS, INC.,)

TYSON POULTRY, INC.,)

TYSON PREPARED FOODS, INC.,)

TYSON PROCESSING SERVICES, INC.,)

and TYSON REFRIGERATED)

PROCESSED MEATS, INC.,)

Defendants.)

Civil Action No. 1:13-cv-56

JOINT NOTICE OF TERMINATION OF CONSENT DECREE

Plaintiff the United States of America (the “United States”), on behalf of the United States Environmental Protection Agency (“EPA”) and Defendants (collectively “the Parties”), respectfully provide the Court with this Notice of Termination of Consent Decree (“Notice”) pursuant to Paragraph 91 of the Consent Decree entered in this matter (Dkt. No. 6). No further action from the Court is required. *Id.* (“The Joint Notice of Termination shall not require any further action from the Court and shall terminate the Consent Decree upon filing.”) In support of this Notice, the Parties state as follows:

1. On April 4, 2013, the United States lodged a Consent Decree (Dkt. No. 2-1) that resolved claims alleged in a Complaint filed on that same date against Tyson Foods, Inc., IBP Redevelopment Corp., IBP Food Co., Foodbrands Supply Chain Services, Inc., Tyson Chicken, Inc., Tyson Deli, Inc., Tyson Fresh Meats, Inc., Tyson Poultry, Inc., Tyson Prepared Foods, Inc., Tyson Processing Services, Inc., and Tyson Refrigerated Processed Meats, Inc. (collectively “Tyson” or “Defendants”) (Dkt. No. 1) for civil penalties and other appropriate relief for violations of Section 112(r)(7) of the Clean Air Act (the “Act”), 42 U.S.C. §7412(r)(7), and its implementing regulations at 40 C.F.R. Part 68, stemming from Tyson’s use and storage of anhydrous ammonia in the refrigeration processes at all 23 of its facilities throughout Iowa, Kansas, Missouri, and Nebraska (the “Facilities”).

2. On June 14, 2013, the Court entered the Consent Decree as a final judgment. (Dkt. No. 6).

3. Section V of the Consent Decree (Payments) required the Defendants to pay to the United States a civil penalty of \$3,950,000 within 30 days of the date of the entry of the Decree by the Court. Section V provided that the payment to the United States shall be made in accordance with instructions that would be provided to the Defendants by the U.S. Department of Justice.

4. Section VI of the Consent Decree (Compliance Requirements) required the Defendants to comply with all applicable Risk Management Program statutory requirements under 42 U.S.C. § 112(r)(7) and regulations promulgated thereunder at 40 C.F.R. Part 68 at the Facilities. Tyson was also required to undertake a process compliance audit conducted by an independent ammonia refrigeration expert and perform piping thickness testing for each of the Facilities and correct all deficiencies on a timely basis.

5. Section IX of the Consent Decree (Supplemental Environmental Project) required the Defendants to conduct a \$300,000 supplemental environmental project to purchase emergency response equipment for local fire departments in multiple communities with environmental justice concerns.

6. Section XX of the Consent Decree (Termination) sets forth the process for terminating the Decree. Paragraph 90 of the Consent Decree provides that the Consent Decree may be terminated after the Defendants have completed the requirements of Section VI (Compliance Requirements) and Defendants have paid the civil penalty required under Section V of the Decree and any outstanding stipulated penalties under Section XI. Paragraph 90 provides that Defendants shall serve upon the United States a request for termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation. Paragraph 91 provides that, if the United States does not object to Defendants' request to terminate the Decree, then the Parties shall file with the Court an appropriate joint notice requesting termination of the Decree. More specifically, "[i]f the United States agrees that the Decree may be terminated, the Parties shall submit to the Court an appropriate Joint Notice of Termination. The Joint Notice of Termination shall recite that the requirements of the Consent Decree have been met. The Joint Notice of Termination shall not require any further action from the Court and shall terminate the Consent Decree upon filing." *Id.*

7. On October 31, 2016, Defendants requested the United States' consent to terminate the Consent Decree and provided documentation to demonstrate their compliance with the Decree. See Exhibit A.

8. Following receipt and review of this notice and documentation from Defendants, the United States agrees that the Defendants have satisfied the requirements for termination of the Consent Decree.

9. The Parties stipulate and agree that the Defendants' obligation to preserve records under Paragraph 42 of the Consent Decree shall, consistent with that Paragraph, continue for five (5) years from the date of this Notice.

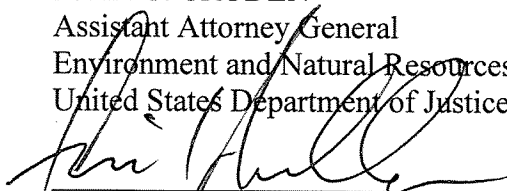
10. Now, therefore, in accordance with Paragraph 91 of the Consent Decree, the Parties respectfully submit this Notice, which does not require any action of the Court, terminating the Consent Decree.

Respectfully Submitted,

FOR THE UNITED STATES OF AMERICA:

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Dated: January 10, 2017



Frederick Phillips, D.C. Bar #433729
Senior Trial Attorney
Environmental Enforcement Section
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RICHARD G. CALLAHAN
United States Attorney
Eastern District of Missouri

NICHOLAS P. LLEWELLYN
Assistant United States Attorney
Bar No. 43839MO

FOR DEFENDANTS:

A handwritten signature in black ink, appearing to read 'Timothy T. Jones', is written over a horizontal line.

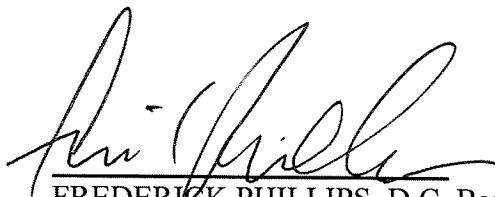
Timothy T. Jones
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(479) 290-7102
Tim.Jones@Tyson.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of January, 2017, I caused a true and correct copy of the foregoing and attachments to be electronically filed with the Clerk of the Court using the CM/ECF system and will send a copy of all documents via email to the attorney listed below for Defendants Tyson Foods, Inc., IBP Redevelopment Corporation, IBP Food Co., Foodbrands Supply Chain Services, Inc., Tyson Chicken, Inc., Tyson Deli, Inc., Tyson Fresh Meats, Inc., Tyson Poultry, Inc., Tyson Prepared Foods, Inc., Tyson Processing Services, Inc., and Tyson Refrigerated Processed Meats, Inc.

Attorney Authorized to Accept Service for all Defendants in this Matter:

Timothy T. Jones
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ATTACHMENT A

October 31, 2016

Via Overnight Express

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
601 D Street, N.W., Room 2121, Washington, D.C. 20004

Email: tom.mariani@usdoj.gov

Anne Rauch, Esq.
Office of Regional Counsel
Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219
Email: Rauch.Anne@epa.gov

Re: United States v. Tyson Foods, Inc., et al., No. 1:13-cv-00056-LMB (E.D. Mo.),
DOJ Reference Case No. 90-5-2-1-07459/1
Request for Termination of Consent Decree

Dear Mr. Mariani and Ms. Rauch:

I write on behalf of the Defendants in the above action to request termination of the Consent Decree pursuant to Paragraph 90, which provides:

90. After Defendants have completed the requirements of Section VI (Compliance Requirements) of this Decree, have complied with all other requirements of this Consent Decree, have paid the civil penalty, have resolved any outstanding disputes, and have paid any accrued stipulated penalties as required by this Consent Decree, Defendants shall serve upon the United States a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting completion documentation required by Appendices A, B, and C (to the extent not already submitted).

Defendants have (1) completed the requirements of Section VI, (2) complied with all other requirements of the Consent Decree, and (3) timely paid the civil penalty. In particular, the third party audits and nondestructive testing required by Appendices A and B were completed as of December 31, 2015, and all action items resulting from the audits and testing were complete as of May 6, 2016. The most recent quarterly report was submitted on June 30, 2016. Furthermore, the completion report for the Supplemental Environmental Project required by Appendix C was submitted January 31, 2014. Finally, the civil penalty was paid on April 4, 2013. There are no outstanding disputes nor any accrued stipulated penalties. Furthermore, all documentation

required by Appendices A, B, and C has already been submitted and therefore is not enclosed herein.

Having satisfied all necessary requirements, Defendants request that the United States agree that the Consent Decree may be terminated and prepare and file, along with Defendants, a Joint Notice of Termination.

Defendants are prepared to confer informally about this request at your convenience pursuant to Paragraph 91 of the Consent Decree. Please contact me at 479-290-4858 or Tyson's counsel Tim Jones at 479-290-7102 should you have any questions.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on any personal knowledge I may have and my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Sincerely,



Tyler Dutton
Senior Director of Compliance Assurance

cc: Timothy T. Jones, Esq.